IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.MC.No. 3968 of 2006()

ST.526/2006 of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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PETITIONER: ACCUSED

BABY MATHEW, AGED 46, S/O. A.J.MATHEW,
ARAMBANKUDIYIL HOUSE, CHOWARA, TRIVANDRUM.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING SUB INSPECTOR OF POLICE,
VIZHINJAM, THIRUVANANTHAPURAM.

2. T.D.ANTONY,
THUNDIPARAMBIL HOUSE, EZHINJILLAM,
CHANGANACHERRY, NOW RESIDING AT VENNALIL HOUSE,
EZHINJILLAM KARA, PERUMTHURUTHY P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3968 OF 2006

Dated this the 5th day of December, 2006.

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The prayer in this Crl.M.C, primarily is to quash the proceedings initiated against the petitioner. According to the petitioner, the cheque was not issued by him. He was not the Managing Director of the company at the relevant time. The signature in the cheque has been forged. The cheque has come into possession of the complainant by some clandestine process. In these circumstances, it is prayed that the prosecution against the petitioner may be quashed.

2. That the cheque has been allegedly forged, is no ground on which prosecution can be quashed under Section 482 Cr.P.C. The petitioner will certainly have to establish in the course of trial that the cheque has not been signed by him. His connection with the company is not disputed though it is alleged that at the relevant time he was not the Managing Director of the company. Documents to that effect have been produced, but certainly that disputed question cannot be resolved in proceedings under Section 482 Cr.P.C.

3. Relying on the decision in **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla** [(2005) 8 SCC 89] it is contended that there is no allegation that the petitioner is in charge of and responsible to the company for the conduct of its affairs. The allegation is that the petitioner is the Managing Director and is also a signatory in the cheque. The dictum in **S.M.S Pharmaceuticals** clearly shows that in so far as the signatory or managing director is concerned, no special or specific allegations are necessary to attract the offence under Section 141 of the N.I Act.

4. I shall carefully avoid any observations on merits. The petitioner shall be at liberty to raise his contentions before the learned Magistrate in the course of trial. Suffice it to say that I do not find any compelling circumstances which can persuade this Court to invoke the powers under Section 482 Cr.P.C to quash the proceedings.

5. The learned counsel for the petitioner submits that the case may be directed to be transferred to the C.J.M, Kottayam. In view of the proviso to Section 407 Cr.P.C, it is for the petitioner to apply for transfer before the learned Sessions Judge. That prayer cannot and need not be entertained in this Crl.M.C.

6. This Crl.M.C is, in these circumstances, dismissed. But with the observation that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all the relevant and appropriate contentions before the learned Magistrate. Nor shall it fetter the right of the petitioner to seek transfer of the case before the learned Sessions Judge having jurisdiction.

R.BASANT
JUDGE

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